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Public Record

July 18, 2006



Eric Bolton
Case Manager
ebolton@ackersonlaw.com

Via Facsimile (202) 565-9004

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, N.W.
Washington, D.C. 20423-0001

David Konschnik, Director
Office of Proceedings
Surface Transportation Board
1925 K Street, NW
Washington, DC 20423-0001

Re: Petition for Declaratory Order - Honey Creek Railroad, Inc.
Robert's Reply in Opposition to Expedited Motion for Protective Order
STB Finance Docket No. 34869

Dear Gentlemen:

Transmitted herewith for filing is Robert's Reply in Opposition to Honey Creek Railroad's Expedited Motion for Protective Order. The original reply and ten (10) copies will be filed via hand delivery.

Please contact me at (202) 833-8833 if you have any questions or concerns.

Sincerely,

Eric Bolton

Enclosure
cc: Parties on Record



**Before the
SURFACE TRANSPORTATION BOARD**

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Finance Docket No. 34869

**HONEY CREEK RAILROAD, INC. -
PETITION FOR DECLARATORY JUDGMENT**

**ROBERT'S REPLY IN OPPOSITION TO HONEY CREEK RAILROAD INC.'S
EXPEDITED MOTION FOR PROTECTIVE ORDER**

KATHLEEN C. KAUFFMAN
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Dated: July 18, 2006

**Before the
SURFACE TRANSPORTATION BOARD**

Finance Docket No. 34869

**HONEY CREEK RAILROAD, INC. -
PETITION FOR DECLARATORY JUDGMENT**

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EXPEDITED MOTION FOR PROTECTIVE ORDER**

Comes now Gary L. Roberts, Roberts Pipeline Construction Company, Inc., and Roberts Construction, Inc. ("Roberts"), by counsel, and files their reply in opposition to Honey Creek Railroad's expedited motion for protective order. This motion is premature. On July 10, the Board served its order granting Roberts a 45-day extension on the reply brief so he could conduct discovery. Counsel's office called early on July 7 to determine if an extension to permit discovery would be granted and was told nothing would be forthcoming that day. The weekend and the morning of July 10 were spent preparing to submit a reply brief by the then due date of July 12. Once the extension was received, counsel returned to discovery. The initial requests were issued four days later on Friday, July 14. It is a requirement that the noticing party specify a date and time for the deposition in the notice. 49 C.F.R. § 1114.22. The three non-party notices set the response dates at the end of the second week after the notice (July 26-28). The notice for William Smith's (of Honey Creek Railroad) deposition set the date for one month after the notice: August 11, 2006. The notices were served on all parties by Federal Express. The first sentence of each notice sets the time and place of the deposition (as they must) and then states: "or such other date, time and/or place as the parties may agree". No one served with the notices

has called to object to the stated date, time and place or to discuss an alternate date, time or place. Counsel is, of course, flexible in this regard within the need to file Roberts' reply in this matter by August 28.

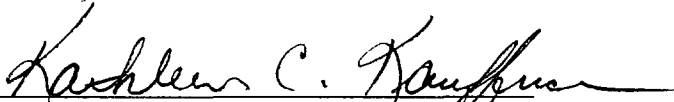
It is expected that calendar conflicts will be raised, discussed and resolved by the parties before involving the Board. Instead, counsel's first indication that the dates stated were a problem for any party was the faxed copy of Honey Creek's motion for a protective order received this afternoon. The certificate of service for that motion does not indicate that it was served on any of the non-parties with response dates in July. If the usual course is followed, counsel for Roberts would expect to discuss the requests with counsel for the non-parties this week and set times for responses agreeable for all parties with primary consideration given to the noticed witness and counsel.

The real concern here appears to be that discovery will happen at all. As a party, Roberts is entitled to discovery under the Board's regulations. 49 C.F.R. § 1114.21. In addition to the deposition notices issued last Friday, Roberts intends to issue limited document requests and interrogatories to Honey Creek Railroad, Inc. today. Roberts' request for an extension of time to file a reply to Honey Creek Railroad's petition for declaratory judgment was based on the need for discovery. Honey Creek Railroad opposed the requested extension because it opposed discovery. The Board concluded: "Roberts' extension request to conduct discovery and file a reply is reasonable and will be granted." This motion for a protective order is not an appropriate vehicle for Honey Creek Railroad to attempt to get a second bite at this apple. The time set for discovery is short. It should not be further shortened by requiring counsel to respond to premature motions for protection. Honey Creek Railroad's motion for a protective order should

be denied.

Dated: July 18, 2006

Respectfully submitted,



Kathleen C. Kauffman (DC Bar # 323212)

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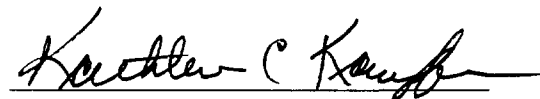
CERTIFICATE OF SERVICE

I hereby certify that I have this 18th day of July, 2006 served a copy of the Roberts' Reply in Opposition to Honey Creek Railroad Inc.'s Expedited Motion for Protective Order upon the following via facsimile and U.S. Mail, first class, postage prepaid:

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A handwritten signature in black ink, appearing to read 'Kathleen C. Kauffman', with a long horizontal flourish extending to the right.

Kathleen C. Kauffman

Attorney for Gary L. Roberts, et al.